

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Rates, Rating Plans, or
Rating Systems of

Generali Assicurazioni Generali
S.P.A. (U.S. Branch),

Respondent.

File No. NC03033520

**NOTICE OF NONCOMPLIANCE
PURSUANT TO CALIFORNIA
INSURANCE CODE SECTION 1858.1**

TO: JERE KEPRIOS
C/O CT CORPORATION SYSTEM
818 WEST SEVENTH STREET, 2ND FLOOR
LOS ANGELES, CA 90017

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California (hereafter "Commissioner") has good cause to believe that the rating plans, rating systems and rates of Respondent, GENERALI ASSICURAZIONI GENERALI S.P.A. (U.S. BRANCH) (hereafter "Respondent") have violated California Insurance Code (hereafter "CIC") sections 1861.01(c), 1861.02, 1861.025, 1861.03(c)(1), and 1861.05(a) and Title 10, California Code of Regulations (hereafter "CCR") sections 2360.3, 2632.5(b), 2632.5(c)(2), 2632.11(g), 2632.13(f), 2632.13(g), 2632.13(i), and 2632.19. The manner and extent of noncompliance is set forth below.

I. GENERAL ALLEGATIONS/APPLICABLE LAW

1.1 Respondent is, and was at all relevant times, an insurer licensed to transact the

business of insurance in the State of California.

- 1.2 Respondent transacts the business of insurance in California on risks or lines subject to the provisions of CIC sections 1861.01(c), 1861.02, 1861.02(a)(2), 1861.02(b)(1), 1861.025, 1861.03(c)(1), and 1861.05(a) and CCR sections 2360.3, 2632.5(b), 2632.5(c)(2), 2632.11(g), 2632.13(f), 2632.13(g), 2632.13(i), and 2632.19.

Respondent's Rating Violations Discovered in Field Rating and Underwriting Exam

- 1.3 From January 1, 2001 to November 26, 2002 the Department conducted a field rating and underwriting examination (hereafter "the 2002 examination") of Respondent's business. The examination was conducted primarily at the office of the Arrowhead General Insurance Agency in San Diego, California.

- 1.4 The 2002 examination focused on Respondent's Private Passenger Automobile lines of business.

- 1.5 The Department conducted the 2002 examination for the purpose of determining whether Respondent's activities complied with applicable California law.

- 1.6 The 2002 examination included a review of the rates, rating plans, forms, and underwriting rules made or adopted by Respondent for use in California, including a review of records of data, statistics, or information maintained by the Respondent in support of or relating to such rates, forms, and rules; a review of the application of such rates, forms, and rules by means of an examination of policy files and related records; and a review of any consumer complaints received by the Department in the most recent year prior to the start of the examination.

- 1.7 During the 2002 examination, the Field Rating and Underwriting Bureau of the Department of Insurance (hereafter "FRUB") discovered that Respondent had stopped writing new private passenger automobile business.

- 1.8 During the 2002 examination representatives of FRUB discovered that Respondent unilaterally changed insureds' annual mileage estimates without notifying the insureds and that Respondent applied a default mileage number to new and renewal business. Respondent did not file this methodology with the Department.

- 1.9 During the 2002 examination, representatives of FRUB discovered that Respondent did not investigate accidents adequately before charging for them.
- 1.10 During the 2002 examination, representatives of FRUB discovered that Respondent failed to rate policies with excess vehicles in accordance with California law.
- 1.11 During the 2002 examination, representatives of FRUB discovered that Respondent rated certain types of married insureds policies in an unfair and inconsistent manner.
- 1.12 During the 2002 examination, representatives of FRUB noted a high error ratio (16% for rating errors and 40% for non rating errors) during the review of Respondent's private passenger automobile business.

Applicable Law

- 1.13 CIC §1861.01(c) requires that property and casualty insurance rates be approved by the Commissioner prior to their use.
- 1.14 CIC §1861.02(a) provides that rates and premiums for an automobile insurance policy...shall be determined by application of the following factors in decreasing order of importance: (1) The insured's driving safety record.. (2) The number of miles he or she drives annually. (3) The number of years of driving experience the insured has had. (4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss.
- 1.15 CIC § 1861.02(b)(1) provides that every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice.
- 1.16 CIC § 1861.025 provides that a person is qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive a motor vehicle for the previous three years, has not had more than one violation point count, and has not been convicted of a major violation during the previous seven years.
- 1.17 CIC § 1861.03(c)(1) provides that notwithstanding any other provision of law, a notice of cancellation or nonrenewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B)

1 fraud or material misrepresentation affecting the policy or insured; (C) a substantial
2 increase in the hazard insured against.

3 1.18 CIC § 1861.05(a) provides that rates shall not be excessive, inadequate, or unfairly
4 discriminatory.

5 1.19 CCR § 2360.3 provides that an insurer shall charge each insured the lowest Premium for
6 which the insured qualifies. At each policy renewal the insurer shall adjust the premium
7 charges to the insured, as necessary, to reflect the lowest Premium for which the insured
8 qualifies at that time.

9 1.20 CCR § 2632.5(b) provides that each insurer may only use the characteristics of one driver
10 to rate each vehicle except for as provided in sections 2632.5(d)(13) and 2632.5(c)(2).

11 1.21 CCR § 2632.5(c)(2) provides that the second mandatory rating factor is the number of
12 miles driven annually. This factor means the estimated annual mileage for the next 12
13 months.

14 1.22 CCR § 2632.11(g) provides that any change to an approved class plan or values assigned
15 to the rating factors, and any change to the values assigned to the make, model, value, cost
16 of repair or auto symbols for the insured vehicles requires the prior approval of the
17 Commissioner. Proposed changes must be submitted with a class plan application.

18 1.23 CCR § 2632.13(f) provides if a driver had insurance that provided coverage for an
19 accident, a subsequent insurer which did not provide coverage at the time of the accident
20 and to whom an application for the issuance of a policy of insurance is made, or from
21 whom a renewal policy is offered, may not consider the driver to be principally at fault for
22 the accident unless certain specific circumstances apply.

23 1.24 CCR § 2632.13(g) provides that if a driver did not have insurance that provided coverage
24 for an accident and if no other insurer of any person involved in the accident made a
25 determination that any other driver was at least 51% of the proximate cause of the
26 accident, an insurer to whom an application for the issuance or renewal of a policy of
27 automobile insurance is made may consider a driver to be principally at fault if the insurer
28 has sufficient information to make that determination.

1 1.25 CCR § 2632.19 provides the risks that, for purposes of cancellation or non-renewal, shall
2 present a substantial increase in hazard insured against.

3 II. SPECIFIC ALLEGATIONS

4 **2.1 RESPONDENT'S FAILURE TO OFFER PERSONAL AUTOMOBILE COVERAGE TO CALIFORNIA GOOD DRIVERS VIOLATED CIC §§ 1861.02(b)(1) AND 1861.025**

5 2.1.1 The Department incorporates, by reference, paragraphs 1.1 through 1.25 above.

6 2.1.2 CIC section 1861.02(b)(1) provides that every person who meets the criteria of Section
7 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of
8 his or her choice.

9 2.1.3 CIC § 1861.025 provides that a person is qualified to purchase a Good Driver Discount
10 policy if he or she has been licensed to drive a motor vehicle for the previous three years,
11 has not had more than one violation point count, and has not been convicted of a major
12 violation during the previous seven years.

13 2.1.4 The Department is informed and believes that beginning in at least August 2000,
14 Respondent was not offering private passenger automobile coverage to any new risks,
15 including Good Drivers as defined by CIC section 1861.025.

16 2.1.5 Respondent writes private passenger automobile business through its general agent,
17 Arrowhead General Insurance Agency (hereafter "AGIA").

18 2.1.6 The Department is informed and believes, based upon a statement from AGIA that
19 Respondent is not writing any new private passenger automobile business.

20 2.1.7 The Department is informed and believes that Respondent does not maintain any other
21 way for a statutorily defined Good Driver to obtain a policy from Respondent.

22 2.1.8 Because Respondent failed to make available and/or provide a Good Driver Discount
23 policy to California Good Drivers as defined by CIC §1861.025, Respondent violated CIC
24 §§ 1861.02 and 1861.025.

25 **2.2 RESPONDENT'S IMPROPER ASSIGNMENT OF ANNUAL MILEAGE VIOLATED 26 CIC SECTIONS 1861.01(c), 1861.02(a)(2), 1861.05(a) AND CCR SECTIONS 2360.3, AND 27 2632.5(c)(2)**

28 2.2.1 The Department incorporates by reference paragraphs 2.1.1 through 2.1.8 above.

- 1 2.2.2 CIC section 1861.01(c) requires that property and casualty insurance rates be approved by
2 the Commissioner prior to their use.
- 3 2.2.3 CIC §1861.02(a)(2) provides that rates and premiums for an automobile insurance
4 policy...shall be determined by application of the following factors in decreasing order of
5 importance:...(2) The number of miles he or she drives annually.
- 6 2.2.4 CIC section 1861.05(a) provides that no rate shall be approved or remain in effect that is
7 excessive, inadequate, or unfairly discriminatory or otherwise in violation of Division 1,
8 Part 2, Chapter 9 of the Insurance Code.
- 9 2.2.5 CCR section 2360.3 provides that an insurer shall charge each insured the lowest
10 Premium for which the insured qualifies. At each policy renewal the insurer shall adjust
11 the premium charges to the insured, as necessary, to reflect the lowest Premium for which
12 the insured qualifies at that time.
- 13 2.2.6 CCR section 2632.5(c)(2) provides that the second mandatory rating factor is the number
14 of miles driven annually. This factor means the estimated annual mileage for the next 12
15 months.
- 16 2.2.7 The Department is informed and believes that beginning in January 2001 Respondent
17 utilized a mileage verification form for its renewal business. The verification form is sent
18 to the insured upon renewal.
- 19 2.2.8 The Department is informed and believes that Respondent instituted an automatic increase
20 for all insureds to a minimum mileage threshold of 10,001 if the mileage verification form
21 was not returned to Respondent. Respondent did not notify the insured that if the insured
22 failed to respond to the form, the insured's annual mileage would be increased.
23 Respondent's form did not even indicate that it needed to be returned. The form stated:

24 "We have re-evaluated the annual mileage calculation on
25 your policy as part of the renewal review process. If you
26 would like us to review the miles driven per year for the
27 vehicles on your policy in consideration of new
28 information, please complete this form and return to the
Underwriting Department."

- 1 2.2.9 The Department is informed and believes that Respondent would automatically increase
2 an insured's annual mileage without notifying the insured.
- 3 2.2.10 Respondent's practice conflicts with the annual mileage definition in the auto rating factor
4 regulations, which requires each vehicle to be rated based on the estimated annual mileage
5 for that vehicle during the twelve month period following the inception of the policy.
6 Further, Respondent's rating rule was not filed with the Department.
- 7 2.2.11 Respondent's use of an unfiled rating rule violated CIC §1861.01(c) which requires that
8 property and casualty insurance rates be approved by the Commissioner prior to their use.
- 9 2.2.12 Respondent's unilateral increase of annual mileage figures irrespective of the insured's
10 actual mileage violated CIC §1861.02(a)(2) which requires that rates and premiums for an
11 automobile insurance policy be determined by the number of miles the insured drives
12 annually.
- 13 2.2.13 Respondent's unilateral increase of annual mileage figures irrespective of the insured's
14 estimate resulted in rates which were excessive or inadequate in violation of CIC section
15 1861.05(a) which requires that no rate shall remain in effect that is excessive, inadequate,
16 or unfairly discriminatory or otherwise in violation of Division 1, Part 2, Chapter 9 of the
17 Insurance Code.
- 18 2.2.14 Respondent's assignment of annual mileage figures irrespective of the insured's estimate
19 resulted in a failure to charge the insured the lowest Premium for which the insured
20 qualifies in violation of CCR section 2360.3.
- 21 2.2.15 Respondent's assignment of annual mileage figures irrespective of the insured's estimate
22 violated CCR section 2632.5(c)(2) which provides that the second mandatory rating factor
23 is the number of miles driven annually, either as the estimated annual mileage for the next
24 12 months or, if the insurer has so notified the consumer prior to policy issuance, as the
25 actual miles for the last 12 months.
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2.3 RESPONDENT'S PRACTICE TO CHARGE FOR AN ACCIDENT PRIOR TO INVESTIGATING THE ACCIDENT VIOLATES CIC SECTIONS 1861.02, 1861.025, AND 1861.05(a) AND CCR SECTIONS 2632.13(f), AND 2632.13(g)

- 2.3.1 The Department incorporates, by reference, paragraphs 2.2.1 through 2.2.15 above.
- 2.3.2 CIC §1861.02 provides that rates and premiums for an automobile insurance policy...shall be determined by application of the following factors in decreasing order of importance: (1) The insured's driving safety record; (2) The number of miles he or she drives annually and (3) The number of years of driving experience the insured has had.
- 2.3.3 CIC § 1861.025 provides that a person is qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive a motor vehicle for the previous three years, has not had more than one violation point count, and has not been convicted of a major violation during the previous seven years.
- 2.3.4 CIC § 1861.05(a) provides that rates shall not be excessive, inadequate, or unfairly discriminatory.
- 2.3.5 CCR § 2632.13(f) provides if a driver had insurance that provided coverage for an accident, a subsequent insurer which did not provide coverage at the time of the accident and to whom an application for the issuance of a policy of insurance is made, or from whom a renewal policy is offered, may not consider the driver to be principally at fault for the accident unless certain specific circumstances apply.
- 2.3.6 CCR § 2632.13(g) provides that if a driver did not have insurance that provided coverage for an accident and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, an insurer to whom an application for the issuance or renewal of a policy of automobile insurance is made may consider a driver to be principally at fault if the insurer has sufficient information to make that determination.
- 2.3.7 The Department is informed and believes that it is Respondent's practice to charge for an accident unless the consumer can prove otherwise. For any accident that appears on a

Motor Vehicle Report or application where fault is not expressly stated, Respondent applied a two-point surcharge without investigating the fault determination.

2.3.8 The Department is further informed and believes that Respondent will charge two points for an accident unless the insured provides proof that the insured was not at fault.

Respondent did not consider a signed declaration from the insured adequate.

2.3.9 As a result of Respondent's failure to adequately investigate accident fault, accidents were deemed bodily injury accidents, preventing an insured who met the statutorily good driver definition from obtaining a Good Driver discount policy.

2.3.10 Respondent's failure to adequately assess fault resulted in insureds that were qualified to receive a Good Driver discount policy failing to receive a Good Driver discount policy in violation of CIC sections 1861.02 and 1861.025. This also resulted in unfairly discriminatory rates in violation of CIC section 1861.05.

2.3.11 Respondent's consideration of a driver to be principally at fault for an accident without the existence of the circumstances listed in 2632.13(f)(1)-(3) violates CCR section 2632.13(f).

2.3.12 Respondent's failure to obtain sufficient information to make a determination before determining accident fault violates CCR section 2632.13(g).

2.4 RESPONDENT'S FAILURE TO EITHER ASSIGN A RATE FOR UNDESIGNATED DRIVERS OR APPLY THE LOWEST RATE IN THE RATING PLAN VIOLATED CIC SECTIONS 1861.02 AND 1861.025 AND CCR SECTION 2632.5(b)

2.4.1 The Department incorporates by reference paragraphs 2.3.1 through 2.3.12 above.

2.4.2 CIC §1861.02(a)(1) provides that rates and premiums for an automobile insurance policy...shall be determined by application of the following factors in decreasing order of importance: (1) The insured's driving safety record; (2) The number of miles he or she drives annually; and (3) The number of years of driving experience the insured has had.

2.4.3 CIC § 1861.02(b)(1) provides that every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice.

1 2.4.4 CCR § 2632.5(b) provides that each insurer may only use the characteristics of one driver
2 to rate each vehicle except for as provided in section 2632.5(d)(13) and section
3 2632.5(c)(2).

4 2.4.5 The Department is informed and believes that Respondent has a rating rule regarding
5 more vehicles than drivers that states “The remaining vehicle(s) shall be assigned the
6 lowest driver classification.” Respondent’s rating plan contains an undesignated driver
7 rate for “Gender Factors” and “Marital Status Factors” for excess vehicles. For all other
8 applicable rating factors, there is no undesignated driver rate.

9 2.4.6 For the applicable rating factors with no undesignated driver rate, Respondent applies the
10 lowest rated driver on the policy, rather than the lowest rate from its class plan for all
11 driver related factors to the excess vehicles.

12 2.4.7 Respondent’s failure to rate policies in accordance with the CCR violates CIC section
13 1861.02.

14 2.4.8 Respondent’s failure to assign either a rate for an undesignated driver or the lowest rate
15 for all driver related factors to the excess vehicles violates CCR section 2632.5(b).

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17 **2.5 RESPONDENT’S INCONSISTENT PRACTICE OF REQUESTING
DOCUMENTATION FOR MARRIED DRIVERS VIOLATES CIC SECTION 1861.05(a)**

18 2.5.1 The Department incorporates, by reference, paragraphs 2.4.1 through 2.4.8 above.

19 2.5.2 CIC § 1861.05(a) provides that rates shall not be excessive, inadequate, or unfairly
20 discriminatory.

21 2.5.3 The Department is informed and believes that Respondent has a company practice of
22 requesting a marriage certificate or tax return for renewal business if the named driver is
23 married and the spouse is excluded, not listed or has a different last name.

24 2.5.4 Respondent will uprate the policy to single from married status if the insured fails to
25 respond to the marital status verification request.

26 2.5.5 The Department is informed and believes that, in spite of Respondent’s stated company
27 practice of requesting documentation, Respondent failed to consistently request
28

documentation and that Respondent's failure to consistently request information resulted in some insureds being rated at the higher single rate.

2.5.6 As Respondent did not consistently rate its policies in accordance with company policy, insureds presenting the same risk of loss were treated dissimilarly. This dissimilar treatment resulted in the unfairly discriminatory application of Respondent's rates in violation of CIC §1861.05(c).

III. RELIEF REQUESTED

3.1 **RESPONDENT IS HEREBY NOTIFIED** that the noncompliance referred to herein must be corrected within twenty (20) days of receipt of this notice, and proof of correction, or other response permitted by California Insurance Code §1858.1, must be presented by that time.

3.2 **RESPONDENT IS FURTHER NOTIFIED** that if Respondent fails to make an adequate or timely response, a public hearing will be set pursuant to California Insurance Code §§1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner finds that the facts as alleged above have occurred and that these facts constitute violations of the applicable sections of the Insurance Code and/or Code of Regulations, as set forth, he may issue an order for payment of money penalties and any other corrective action as he may deem appropriate.

3.3 **RESPONDENT IS FURTHER NOTIFIED** that if the noncompliance referred to above constitutes willful acts involving the use of rates, rating plans, and/or rating systems in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code, pursuant to Section 1858.07 of the California Insurance Code, the imposition of civil penalties will be sought in the amount of \$10,000.00 for each act. This Notice may be amended to set forth additional willful acts in violation of Chapter 9, Part 2, Division 1, of the California Insurance Code and to seek additional penalties in the amount of \$10,000.00 for each act.

1 **3.4 RESPONDENT IS FURTHER NOTIFIED** that, alternatively, in the event that
2 those acts involving the use of rates, rating plans, and/or rating systems in violation of
3 Chapter 9, Part 2, Division 1 of the California Insurance Code are not found to be
4 willful violations of that chapter, then pursuant to California Insurance Code
5 §1858.07, the imposition of civil penalties will be sought in the amount of \$5,000.00
6 for each act. The Commissioner further reserves the right to seek any other penalties
7 provided for under California Insurance Code §1858.07 in the event that the acts set
8 forth above, or such acts as may be alleged upon amendment hereof, were inadvertent.

9 **3.5** The Commissioner reserves the right to amend this Notice of Noncompliance, as new
10 facts become available.

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12 Dated: April 6, 2005

CALIFORNIA DEPARTMENT OF INSURANCE

13
14 By _____/s/
15 Lara Sweat
16 Staff Counsel
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